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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 804

HARRISON PARKER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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In The

Supreme Court of the United States

October Term, 1940.

No.

HARRISON PARKER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

Your petitioner, Harrison Parker, respectfully alleges:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

1. The petitioner, Harrison Parker, was adjudged guilty of criminal contempt of the Criminal Court of Cook County, Illinois, on December 6, A. D. 1939, and was sen-

tenced to the Common Jail of Cook County, Illinois, for a period of ten days, having been held liable by that Court for the publication of two letters written and addressed to the Foreman of the Cook County Grand Jury and certain members of the Grand Jury then and there sitting in Cook County, Illinois, the contents of which said letters are set up *verbatim* in the information charging the contempt (R. 3-7; 11-19).

2. The judgment of conviction was affirmed by the Court below, the Supreme Court of the State of Illinois, on October 11, 1940, and became final on December 4, 1940, when that Court denied petitioner's application for rehearing.

3. These letters set forth information relating to violations of the criminal laws of Illinois on matters not then pending before that Grand Jury.

4. The constitutional questions raised by this petition for a writ of *certiorari* are:

(a) Whether the petitioner has been deprived of a constitutional right to inform the Grand Jury of his County, on a non-pending matter, of a violation of the criminal laws of the State, and

(b) Whether he has been deprived of freedom of speech, freedom of the press, the right to petition the Government for a redress of grievances and due process of law, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

At the bar of the Courts of Illinois, the petitioner urged that he had a constitutional right to inform the Grand Jury of violations of criminal laws of the State in and concerning matters not then pending before the said Grand Jury, and that the judgment of conviction for contempt of court abridged his freedom of speech and freedom of the press by violating two standards applicable to free speech cases generally, and to contempt of court by publication, as well:

(1) the "actual obstruction" rule first espoused by Justices Holmes and Brandeis, in dissent, in *Toledo Newspaper Company* v. *U. S.*, 247 U. S. 402, 422; adopted by the Supreme Courts of South Dakota and Indiana, (in *State* v. *American News*, 64 S. D. 385, and *Nixon* v. *State*, 207 Ind. 426, respectively); and

(2) the "clear and present danger" rule, first delineated by Justice Holmes in *Schenck* v. *U. S.*, 249 U. S. 52; in effect abandoned by this Court in *Gitlow* v. *New York*, 268 U. S. 652, over the dissenting protests of Justices Holmes and Brandeis; reasserted by Justice Brandeis in *Whitney* v. *California*, 274 U. S. 357; and finally readopted by this Court in *Herndon* v. *Lowrey*, 301 U. S. 242.

The petitioner contends that a standard of guilt upon a charge of contempt of court by publication short of the "actual obstruction" principle, or the "clear and present danger" rule, denies due process, and that, particularly, the view adopted by the trial Court and the Supreme Court of the State of Illinois, to wit, that the petitioner was guilty of "acts and conduct directly calculated to

impede, embarrass and obstruct the Court in the due administration of justice", as the result of the letters written by him to the Grand Jury, which acts "had a tendency to directly impede, embarrass or obstruct the Grand Jury" (R. 37) fixes such "vague and indeterminate boundaries" as to constitute a "dragnet which may enmesh anyone" exercising his constitutional right of freedom of speech, quite as much as to the "vague and indeterminate" standard announced by the Courts of the State of Georgia, and rejected by this Court in *Herndon* v. *Lowrey,* 301 U. S. 242.

This petition presents to this Court for determination the principles of freedom of speech and of the press as applicable to the judiciary; and, particularly, these principles as applicable to constructive contempt by publication. This Court in recent years has stoutly upheld freedom of expression, so ably characterized by Mr. Justice Cardozo in *Palko* v. *Conn.,* 302 U. S. 219, as "the matrix, the indispensable condition of nearly every form of freedom", and this Court's opinions and decisions have all been in the line of protection and extension of freedom of speech and of the press.

In these free speech cases, the issue was the constitutional limit to legislative and executive authority, when the legislature and executive came into conflict with the right of the individual to freedom of expression.

Herndon v. *Lowrey,* 301 U. S. 242;
Lovell v. *Griffin,* 303 U. S. 444;
Hague v. *C. I. O.,* 307 U. S. 496;
Schneider v. *Irvington,* 308 U. S. 147, 60 Sup. Ct. Rep. 146.

Until *certiorari* was allowed in the case of *Bridges* v. *The State of California,* it was almost 35 years since this

Court reviewed a judgment of contempt by a State Court. The case of *Toledo Newspaper Co.* v. *U. S.*, 247 U. S. 402, decided some 23 years ago, was apparently the last time this Court dealt with a problem of constructive contempt by publication upon the merits.

The case at bar asks consideration of the problem of the constitutional limit, if any, to the authority of the judiciary, when the Courts of the nation come into conflict with the rights of the people to free speech and a free press.

Since the last consideration of the problem by this Court of the applicable principles of free speech and free press to publications affecting the judiciary, the State Courts have expressed views and adopted standards that are hopelessly conflicting and irreconcilable, as disclosed by the adoption of the "actual obstruction" principle by the Courts of South Dakota and Indiana, on the one hand, and the adherence to the "tendency" doctrine in California and in the Court below of "acts of conduct directly calculated to impede, embarrass and obstruct" the Court.

The instant case presents likewise an aspect of such conflict which calls for clarification and authoritative determination by this Court.

In the recent free speech cases this Court has carefully fixed the boundaries of free speech in the field of political issues. He who undertakes to exercise his constitutional right in the matter of political issues knows with reasonable certainty when he is running afoul of the law, and when the Constitution of the United States may no longer afford him a shield.

Until, and unless there is similar clarification by this Court upon the subject of contempt by publication of letters to a Grand Jury, one who dares to assert his consti-

tutional right of freedom of expression, and of informing the Grand Jury of violations of law in matters not then pending before it, runs the risk of being "enmeshed" by the "dragnet" of the "vague and indefinite boundaries to such speech set up by the Courts of Illinois".

This petition raises the important question of Federal constitutional law, involving freedom of speech and of the press—rights which this Court has deemed "fundamental personal rights and liberties" (*Schneider* v. *Irvington*, 308 U. S. 147, 60 Sup. Ct. Rep. 146).

The petitioner contends that if such characterization of those rights is not to be "an empty phrase", as affecting his freedom of speech, this Court should review the judgment of conviction of the petitioner for an alleged contempt of the Criminal Court of Cook County, Illinois, which judgment of conviction the petitioner claims abridges his constitutional right to freedom of speech and of the press, as well as his constitutional right as a citizen having no official connection with the Grand Jury, without any previous authorization, to address a written communication to that body, informing it of evidence of crime in the possession and within the knowledge of himself, which he offers to deliver and make known to the Grand Jury on a subject not then before it for deliberation and decision, and in which he charges that the State's Attorney refuses to bring the evidence of said crime before it because of his own complicity therein.

HARRISON PARKER,
Petitioner.

By IRVING BREAKSTONE,
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